

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 26, 2000**

**IN RE:** )  
 )  
**TARIFF FILING TO REDUCE FIRE HYDRANT** )  
**ANNUAL CHARGES AS PART OF A** ) **DOCKET NO. 99-00891**  
**SETTLEMENT AGREEMENT BETWEEN** )  
**THE CITY OF CHATTANOOGA AND** )  
**TENNESSEE-AMERICAN WATER COMPANY** )

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**ORDER APPROVING TARIFF**

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This matter came before the Tennessee Regulatory Authority (the "Authority") at the regularly scheduled Authority Conference held on January 11, 2000 for consideration of the tariff filing (the "Tariff") of Tennessee-American Water Company (the "Company"). The Company filed its Tariff on November 17, 1999 with an effective date of December 17, 1999. At the December 7, 1999 Authority Conference, the Authority suspended the Tariff for thirty (30) days, through January 15, 2000. The Company filed this Tariff as a part of its compliance with a Settlement Agreement (the "Agreement") entered into on October 25, 1999 between the Company and the City of Chattanooga (the "City").<sup>1</sup> In accordance with the Settlement

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<sup>1</sup> The Agreement contains the terms of a settlement of a condemnation lawsuit, *City of Chattanooga v. Tennessee-American Water Company et al.*, Case No. 99-C-1081, Circuit Court of Hamilton County, Division IV. Section 2.B of the Agreement states as follows:

[The Company] and the City will file a joint petition with the Tennessee Regulatory Authority ("TRA") seeking permission to reduce over a two-year period the current charge of \$301.00 a year per fire hydrant to \$50.00 a year per fire hydrant at the end of that period. If the TRA does not approve this provision, then this section is null and void.

Agreement, the Company submitted its Tariff, designated as the Fifth Revision of Sheet No. 8 of its TPSC (Tennessee Public Service Commission) Tariff No. 19, to the Authority for approval.

While Settlement Agreements are often encouraged as a mechanism for parties to resolve amongst themselves what may otherwise remain as contestable issues, the joint presentation of such an Agreement does not in any way diminish the Authority's duty to ensure that tariffs are filed in accordance with state law and are consistent with the public interest. Consequently, the Authority considered only the merits of the Tariff as filed by the Company.<sup>2</sup>

According to its proposed Tariff, the Company will decrease, in quarterly reductions, its annual charges to the City for each fire hydrant from the current rate of \$301.20 to a rate of \$50.00. The first such reduction is to be effective December 31, 1999, with the final reduction taking effect December 31, 2001. The Company currently provides 4,491 fire hydrants to the City and several nearby areas.<sup>3</sup> According to Tennessee-American Water Company, its proposed Tariff, after the final reduction has taken place, results in an annual revenue impact of negative \$1,127,964.<sup>4</sup>

The instant concern to the Authority in considering this Tariff is the immediate and material lost contribution that would result upon approval of this Tariff. It is clear that in order to afford the Company the opportunity to achieve its presently authorized return that either revenue streams from other sources must be increased<sup>5</sup> or the company and its stockholders must

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<sup>2</sup> The Authority notes that the Settlement Agreement was solely between the Company and the City of Chattanooga, and the Authority's consideration, consistent with state law, of this Tariff filing would remain unchanged absent such an Agreement.

<sup>3</sup> The Company provides public fire hydrant service to the City of Chattanooga, the City of East Ridge, the City of Red Bank, the Town of Lookout Mountain, and unincorporated areas of Hamilton and Marion Counties, as well as the City of Rossville, Georgia, the Town of Lookout Mountain, Georgia, and unincorporated areas of Walker, Catoosa, and Dade Counties, Georgia.

<sup>4</sup> Company's Response to Authority Data Request, December 20, 1999, Attachment A.

<sup>5</sup> This can be achieved in a number of ways including adding more customers, increasing rates, etc . . .

agree to absorb the shortfall.<sup>6</sup> While not the Authority's primary consideration in evaluating this Tariff, it is worth noting that the Settlement Agreement purports to benefit local taxpayers by approximately \$1,000,000 per year. Interestingly, even if the City of Chattanooga flowed through the full \$1,000,000 to the existing ratepayer body, the potential that a net contribution loss would remain may not be entirely eliminated. In effect, Chattanooga taxpayers could potentially be better off while Chattanooga ratepayers could potentially be worse off.

The Authority is mindful that the Company acts on behalf of itself and its stockholders and the two cannot, for our purposes, be deemed severable. To hold otherwise would place the Authority in the unenviable position of "knowing" better than does the Company what is in its best interests. This is particularly apropos in instances, as is the case here, where a settlement is involved. Here, William F. L'Ecuier, President of Tennessee-American Water, represented the Company and stockholders; and, Mayor Jon Kinsey represented the City of Chattanooga.

Both Tennessee-American Water Company's legal counsel and Mr. L'Ecuier, on behalf of the Company and stockholders, represented that the Company intended to recover the lost margin resulting from the approval of this Tariff by increasing sales of water to existing customers and by gaining new customers. Additionally, Mr. L'Ecuier further stated that any expenses incurred by the Company in litigation defense would not be borne by its ratepayers but rather by the stockholders of the American Water Works Company. The Company, furthermore, states that approval of a rate reduction for the City of Chattanooga, will somehow translate into an opportunity to become more competitive and efficient, thereby ultimately resulting in ratepayer benefits. Finally, as noted above, the City of Chattanooga urges approval based on an estimated potential \$1,000,000 annual saving.

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<sup>6</sup> In this instance, lost revenues attributed to this Tariff filing would be imputed into the Company's subsequent rate filings, thus reflecting the Company's and stockholders' decision to absorb the contribution loss.

While it is not absolutely necessary to envision the totality of the potential long-term benefits attendant to approving a \$1,127,964 reduction in contribution in this instance, it is clear that the Company considers itself to be making a sound business decision that it is convinced will likewise yield future ratepayers benefits. The Company (and stockholders) memorialized its conviction by stating its intention to limit margin loss recovery in a manner that has no effect on today's or future rates. The Authority does not, nor is it within its purview to do so, question the prudence of the Company's or its stockholders' assessment of risk or reward to the Company in deciding to seek approval of this Tariff filing.<sup>7</sup> It is, furthermore, recognized that a Tariff filing containing potential, long-term benefits while producing no immediate or long-term injury is clearly within the public interest; and, additionally nothing was identified herein in contravention of state law.

After hearing the statements presented by the Company and the City, a majority of the Directors determined that the Tariff should be approved. The majority, furthermore, ordered, consistent with the Company's representations, that the loss of revenue resulting from rate reductions to the City of Chattanooga be borne by the Company's stockholders and not by the Company's ratepayers, either now or at any time in the future.<sup>8</sup> In approving this tariff, the Authority recognizes that the Company has voluntarily reduced its rates as part of its Settlement Agreement with the City of Chattanooga. Therefore, given the facts in this instance, as discussed

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<sup>7</sup> The Company's shareholders, of course, do have recourse from what they may perceive to be an imprudent management decision. Owners may simply decide to reconfigure management or pursue other remedies. Nevertheless, remedial cures resulting from improvidence is the unique responsibility that exists between owners and management alone.

<sup>8</sup> Director Greer voted not to approve the Tariff. Director Greer did, however, state, "I do strongly agree though with . . . Chairman Malone's portion of his motion that says that he believes the ratepayers should not bear any cost in any future rate case. I strongly support that decision." Transcript of Authority Conference, January 11, 2000, at 27.


above, the Authority, consistent with the Company's representations, does not deem it appropriate that this voluntary contribution loss be recoverable from ratepayers.

**IT IS THEREFORE ORDERED THAT:**

1. The Tariff filing of Tennessee-American Water Company to reduce fire hydrant annual charges is approved;
2. The lost contribution to Tennessee-American Water Company resulting from the reduction in fire hydrant charges along with any expenses incurred as a result of the underlying litigation with the City of Chattanooga shall be borne, in full, by the stockholders of Tennessee-American Water Company;
3. The Company's ratepayers shall not at any time, through increases in rates, fees, schedules, or otherwise, bear any of the cost resulting from this Tariff filing by Tennessee-American Water Company to voluntarily reduce its fire hydrant charges to the City of Chattanooga.

  
Melvin J. Malone, Chairman

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H. Lynn Greer, Jr., Director

  
Sara Kyle, Director

ATTEST:

  
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K. David Waddell, Executive Secretary

\*\*\* Director Greer did not vote with the majority and is filing a separate dissent which is attached to this Order.